



Office of Appeals
U.S. Department of Housing and Urban Development
Washington, D.C. 20410-0001

In the Matter of:

Edmundo Lopez III,
Petitioner

:
:
: HUDOA No. 10-H-CH-AWG90
: Claim No. 721003953

Edmundo Lopez III
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Pro se

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For the Secretary

DECISION AND ORDER

On May 27, 2010, Petitioner requested a hearing concerning a proposed administrative wage garnishment relating to a debt allegedly owed to the U.S. Department of Housing and Development ("HUD"). The Debt Collection Improvement Act of 1996, as amended (31 U.S.C. § 3720D), authorizes federal agencies to use administrative wage garnishment as a mechanism for the collection of debts owed to the United States Government.

The administrative judges of this Office have been designated to determine whether the Secretary of Housing and Urban Development ("Secretary") may collect the alleged debt by means of administrative wage garnishment if the debt is contested by a debtor. This hearing is conducted in accordance with the procedures set forth at 31 C.F.R. § 285.11, as authorized by 24 C.F.R. § 17.170. The Secretary has the initial burden of proof to show the existence and amount of the debt. 31 C.F.R. § 285.11(f) (8) (i). Petitioner, thereafter, must show by a preponderance of the evidence that no debt

exists or that the amount of the debt is incorrect. 31 C.F.R. § 285.11(f)(8)(ii). In addition, Petitioner may present evidence that the terms of the repayment schedule are unlawful, would cause a financial hardship to Petitioner, or that collection of the debt may not be pursued due to operation of law. *Id.* Pursuant to 31 C.F.R. § 285.11(f)(4) and (f)(10), on June 1, 2010, this Office stayed referral by HUD of this matter to the U.S. Department of the Treasury for issuance of an administrative wage garnishment order until the issuance of this written decision, unless a wage garnishment order had previously been issued against Petitioner.

Background

On February 7, 2002, Petitioner executed and delivered to the Secretary a Subordinate Note in the amount of \$4,628.70 ("Note") and Security Instrument to secure a partial claim paid on his behalf by the Secretary to pay the arrearages on his primary FHA-insured mortgage and to avoid the foreclosure of his home. (Secretary's Statement and Proposed Repayment Schedule ("Sec'y Stat."), filed June 23, 2010, ¶ 1, Ex. 1.) Pursuant to the terms of the Note, payment becomes due and payable when "Borrower has paid in full all amounts due under the primary [n]ote and related mortgage, deed of trust or similar [s]ecurity instruments insured by the Secretary...." (Sec'y Stat. ¶ 2, Ex. 1, ¶ 4(A)(i).) The Note also expressly states that payment shall be made to the following address: Office of Housing FHA-Comptroller, Director of Mortgage Insurance Accounting and Servicing, 451 Seventh Street, SW, Washington, DC 20410. (Sec'y Stat., Ex. 1, ¶ 4(B).) On or about August 11, 2003, the FHA mortgage insurance on the original Note and Security Instrument was terminated as the mortgagee indicated the mortgage was paid in full. (Sec'y Stat., ¶ 3.)

The Secretary has made efforts to collect this debt from Petitioner, but Petitioner remains in default. (Sec'y Stat., ¶ 5, Ex. 2, Declaration of Brian Dillon, Director, Asset Recovery Division, HUD Financial Operations Center ("Dillon Decl."), ¶ 5.) The Secretary alleges that Petitioner is indebted to HUD on the Note in the following amounts:

- (a) \$2,325.42 as the unpaid principal balance as of May 31, 2010;
- (b) \$0.00 as the unpaid interest on the principal balance at 4% per annum through May 31, 2010; and
- (c) interest on said principal balance from May 31, 2010, at 4% per annum until paid.

(*Id.*)

A Notice of Intent to Initiate Wage Garnishment dated April 28, 2010 was sent to Petitioner. (Sec'y Stat., ¶ 7, Ex. 2, Dillon Decl., ¶ 6.) The Notice afforded Petitioner the opportunity to enter into a written repayment agreement with HUD under the terms agreeable to HUD in accordance with 31 C.F.R. § 285.11(e)(2)(ii), but Petitioner has not entered into a repayment agreement. (Sec'y Stat., ¶ 8, Ex. 2, Dillon Decl., ¶ 7.)

Pursuant to 31 C.F.R. § 285.11(i)(A), the Secretary's proposed repayment schedule is \$836.65 per month or 15% of Petitioner's disposable income. (Sec'y Stat., ¶ 9, Ex. 2, Dillon Decl., ¶ 8, Ex. A.)

Discussion

Petitioner challenges collection of the debt on the grounds that the terms of the proposed repayment schedule would create a financial hardship. Petitioner asserts, "I request waiver to assessed wage garnishment since it will only weaken my current economic situation and ability to support my family." (Petitioner's Letter ("Pet'r Ltr."), filed July 9, 2010; see also Request for Hearing ("Pet. Hr'g. Req."), dated May 27, 2010).

Pursuant to 31 C.F.R. § 285.11(f)(8)(ii), Petitioner may present evidence that the terms of the repayment schedule would cause a financial hardship. In support of Petitioner's argument, Petitioner provided this Office with copies of bills and payments, financial statements and pay stubs. (Pet'r Ltr.)

Petitioner has provided documentary evidence from his employer that effective July 1, 2010, Petitioner's new salary will be \$62,952. (Pet'r Ltr., Attach.) Petitioner's disposable income is determined "after the deduction of health insurance premiums and any amounts required by law to be withheld . . . [including] amounts for deductions such as social security taxes and withholding taxes." 31 C.F.R. § 285.11(c). Because Petitioner has not provided any documentary evidence of allowable deductions for his new income, for calculation purposes, this Office will rely upon the amount of allowable deductions of \$1,478.29 according to the Direct Deposit Notice submitted by Petitioner to the Secretary, dated June 17, 2010. (Sec'y Stat., Ex. 2, Dillon Decl., ¶ 8, Ex. A.) After deducting allowable deductions, Petitioner is left with a monthly disposable income of \$3,767.71. (*Id.*)

Petitioner also submitted documentary evidence, along with proofs of payment, of the following essential monthly household expenses: mortgage, \$893; electric \$174.31; gas, \$68.96; water, sewer and garbage, \$68.96; insurance, \$88.32; Laredo Federal Credit Union loan, \$370; Texas Credit Corporation of Laredo loan, \$83.75; Millennium Loan Fund, LLC loan, \$220; Parra Loan Company loan, \$53; First National Collection Bureau loan, \$62.08; and EZMoney Loan, \$250. Petitioner submitted documentary evidence of monthly wireless phone expense of \$330.91. The expense is deemed excessive, and, therefore, only a portion of the expense, \$100, will be credited towards Petitioner's essential monthly household expenses. Petitioner's monthly charge of \$357.71 for Time Warner Cable Television was not credited towards Petitioner's essential monthly expenses because this expense is not considered an essential living expense. Thus, Petitioner's essential household expenses total \$2,450.62 monthly.

Petitioner also provided documentary evidence of loans from various lenders in the following original principal amounts, including CashNet USA, \$73.49 and \$371; Discover Card, \$1,018.19; Sprint, \$2,395.64; CashBack Payday Advances; \$962.5; unnamed lenders, \$910, \$48 and \$52.91; Banner of Finance of Laredo, \$469; Millennium

Loan Fund, \$367.95; and Texas Auto Title Loan Note, \$664. (Pet'r Ltr., Attach.) Petitioner further provided documentary evidence of the following medical expenses: Raul Ramos, MD, \$73.95; and BlueCross BlueShield of Texas, \$410 and \$30. (*Id.*) These loans and medical expenses, however, will not be credited towards Petitioner's essential monthly expenses because Petitioner has not submitted sufficient documentary evidence to establish either a recent record of payment or establish whether these expenses are recurring monthly expenses.

Petitioner's monthly disposable income of \$3,767.71 less his monthly bills and expenses of \$2,450.62 leaves Petitioner with a remaining balance of \$1,317.09. A 15% garnishment rate of Petitioner's current disposable income would equal approximately \$565.16 monthly, and leave Petitioner with a monthly disposable income of \$751.93. Pursuant to 31 C.F.R. § 285.11(k)(3), this Office has the authority to order garnishment at a lesser rate based upon the record before it. After calculating amounts to cover Petitioner's essential expenses, I find that an order for administrative wage garnishment of Petitioner's disposable income at the rate of 15% would enable Petitioner to meet expenses to cover basic household needs. Thus, I find that Petitioner has failed to substantiate his claim that administrative wage garnishment of his disposable income, in the amount sought by the Secretary, would cause financial hardship.

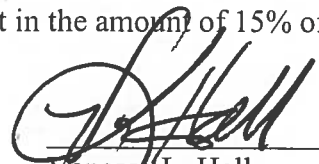
Additionally, while Petitioner may wish to negotiate repayment terms with the Department, this Office is not authorized to extend, recommend, or accept any payment plan or settlement offer on behalf of the Department. Petitioner may want to discuss this matter with Counsel for the Secretary or Lester J. West, Director, HUD Financial Operations Center, 52 Corporate Circle, Albany, NY 12203-5121, who may be reached at 1-800-669-5152. Petitioner may also request a review of his financial status by submitting to the HUD Office a Title I Financial Statement (HUD Form 56142).

ORDER

Based on the foregoing, I conclude that an administrative wage garnishment would not create a financial hardship for the Petitioner.

The Order imposing the stay of referral of this matter to the U.S. Department of Treasury for administrative wage garnishment is **VACATED**. Therefore, it is hereby

ORDERED that the Secretary is authorized to seek collection of this outstanding obligation by means of administrative wage garnishment in the amount of 15% of Petitioner's disposable income.



Vanessa L. Hall
Administrative Judge

August 25, 2010